

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
(Beckering, P.J., and Borello and M.J. Kelly, JJ.)

HELEN YONO

Supreme Court No. 150364

Plaintiff/Appellee,

Court of Appeals No. 308968

v

MICHIGAN DEPARTMENT
OF TRANSPORTATION,

Defendant/Appellant.

**LEAGUE OF MICHIGAN BICYCLISTS' BRIEF AMICUS CURIAE
IN SUPPORT OF PLAINTIFF/APPELLEE HELEN YONO**

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INTEREST OF AMICUS CURIAE

The League of Michigan Bicyclists (LMB) is a non-profit, tax-exempt, state-wide membership organization working to improve conditions for bicycling in Michigan. The LMB supports many programs and projects and cooperates with state and local agencies and other like-minded groups toward this goal. One such effort is the LMB's participation in the on-going campaign to encourage state and local governments to adopt "Complete Streets" policies, which the State of Michigan did in 2010. See generally, MCL 247.660a.

Because the issues on appeal in this case will likely affect the responsibility of state and local governments to maintain safe public roads for all those who lawfully use them, including bicyclists, the LMB has taken an interest in the outcome of this particular case. Accordingly, the LMB is also now interested in participating as amicus curiae in this case.

Specifically, the LMB is concerned that this Court may adopt MDOT's position that its duty to maintain public roads extends only to the "travel lanes." The LMB disagrees with that position because it would exclude not only parallel parking, as in this case, but also, by implication, bicycling lanes and other similarly "improved portions" of Michigan's public roads, which are used everyday by bicyclists lawfully traveling Michigan's public roads.

By participating as amicus curiae in this case, the LMB seeks to make its views known so that the interests of bicyclists (and all others who lawfully travel on public roads by non-motorized means) are fully considered by this Court before a decision is rendered.

INTRODUCTION

Safe public roads are not solely the concern of motor vehicle users in Michigan. Non-motorized travel is also a lawful use of Michigan's public roads. Increasingly, people are using public roads to transport themselves by non-motorized means. See U.S. Census Bureau, American Community Survey Reports, 2012, Mode Less Traveled – Bicycling and Walking to Work in the United States, 2008-2012. For many people in Michigan, bicycling is a swift, reliable, and cost-effective mode of transportation. For others, walking is another good option. But, to do so safely, public roads must be maintained "in reasonable repair".

The condition of Michigan's public roads has been widely discussed over the past few years. To say that many of Michigan's public roads are in poor condition would be an understatement. According to some recent reports, 38% of Michigan's public roads are in poor condition, 45% are in fair condition, and only 17% are in good condition. Moreover, the percentage of roads in poor condition in Michigan may reach 53% in the next 10 years. See generally, TRIP report, April 2015. Unsafe public roads in Michigan pose unique dangers for bicyclists and other non-motorists, who are truly "vulnerable roadway users."

In this case, however, Defendant/Appellant MDOT seeks to limit the duty to maintain Michigan's public roads by narrowing how this Court has interpreted the key phrase "improved portion of the highway designed for vehicular travel" under MCL 691.1402(1). In sum, MDOT contends that the improved section of public road where Ms. Yono was injured on an alleged pavement defect in the surface of the road was not "designed for vehicular travel" because the defect was located in an area designated for parallel parking.

In granting leave to appeal in this case, this Court asked the parties to address several questions. Those questions are largely specific to the facts in this case. Most

important to the LMB is whether an improved section of public road outside the “travel lanes” is “designated for vehicular travel” as required by MCL 691.1402(1). Accordingly, the LMB will seek to limit its discussion, as *amicus curiae*, to that broader legal question.

Simply put, the LMB is especially concerned that if the duty to maintain public roads in Michigan under MCL 691.1402(1) is limited to the so-called “travel lanes,” there will no longer be a duty to maintain many existing, and contemplated, bicycling lanes in Michigan.

For the LMB, such a result would be contrary to its “Complete Streets” efforts in Michigan. because the goal of “completing the streets” does not end when bicycling lanes are designated on Michigan’s public roads. It requires also that bicycling lanes be maintained in a condition reasonably safe and fit for public travel. If motorists and bicyclists (as well as pedestrians) “share the road” in Michigan, then all improved sections should be maintained, so long as the area in question was “designed for vehicular travel”.

While drawing lines on a public road designating where cars normally go, and where bikes ideally should go, may be helpful to everyone who lawfully uses Michigan’s public roads, it should not determine ultimately whether there is a duty to maintain a particular section of a public road in Michigan in a reasonably safe condition. If a section of public road is improved, and regular (as opposed to emergency) vehicular traffic on that section of road is both permitted and contemplated, that section of road is “designed for vehicular travel” and a duty clearly exists to keep it in “reasonable repair” under MCL 691.1402(1).

Any other result in this case would deny non-motorists who lawfully use Michigan’s public roads, including bicyclists, the protection afforded by MCL 691.1402(1). Any other result would clearly negate the efforts undertaken by the LMB and other like-minded groups to ensure “Complete Streets” throughout the State of Michigan. Instead, it would

suggest that improved sections of Michigan's public roads, including designated bicycling lanes, need not be maintained in a condition reasonably safe for all public travel. Such an outcome would undermine the Legislature's clear intent that Michigan's public roads be maintained for all who lawfully use them, including motorists, bicyclists, and pedestrians.

The LMB strongly urges this Court to consider the broad implications of a legal ruling in this case that a designated parallel parking area is not "designed for vehicular travel" and reject MDOT's position that there is no duty to maintain a designated parallel parking area.

QUESTION PRESENTED

- I. Whether an improved section of a public road that is designated for parallel parking is "designed for vehicular travel" under MCL 691.1402(1)?

Plaintiff/Appellee, Helen Yono, says "Yes".

Defendant/Appellant MDOT says "No".

Amicus curiae LMB says "Yes".

STATEMENT OF FACTS

The LMB, as amicus curiae, accepts the facts as stated in the parties' briefing in this case. To the extent that there may be some factual disagreement between the parties, it is not germane to the concerns that the LMB will address in its amicus briefing in this case. Further, the LMB relies on the factual recitation contained in the Court of Appeals' opinion.

STANDARD OF REVIEW

The LMB, as amicus curiae, agrees that the standard of review on appeal is *de novo* when there is a question of statutory interpretation, as in this case. See generally, *Estes v Titus*, 481 Mich 573, 578-579, 751 NW2d 493 (2008).

ARGUMENT

I. PARALLEL PARKING LANES ARE “DESIGNED FOR VEHICULAR TRAVEL” UNDER MCL 691.1402(1) AND THEREFORE, MUST BE MAINTAINED IN A CONDITION “REASONABLY SAFE AND CONVENIENT” FOR ALL “PUBLIC TRAVEL” INCLUDING BICYCLISTS AND PEDESTRIANS. THE SAME IS TRUE FOR ALL DESIGNATED BICYCLING LANES ON PUBLIC ROADS IN MICHIGAN.

A. Non-motorists are entitled to use Michigan’s public roads.

In Michigan, the law protects the right of non-motorists, including bicyclists (but also pedestrians), to use the public roads. Effectively, the Motor Vehicle Code, MCL 257.1, et seq, mandates that motorists “share the road” with bicyclists (and other traveling via non-motorized means). For bicyclists, that mandate is especially clear because MCL 257.657 provides that “[e]ach person riding a bicycle . . . upon a roadway has all of the rights and is subject to all of the duties applicable to a driver of a vehicle under [Chapter VI of the Motor Vehicle Code, MCL 257.601, et seq],” except for special regulations on operating bicycles in Michigan and any vehicle code provisions clearly inapplicable to bicycling.

Along with the right to use Michigan’s public roads, however, the Michigan Motor Vehicle Code also imposes duties on bicyclists. In particular, MCL 257.660a provides that “[a] person operating a bicycle upon a highway or street at less than the existing speed of traffic shall ride as close as practicable to the right-hand curb or edge of the roadway.” In

short, bicyclists and motorists in Michigan have a statutory obligation to “share the road”. As such, Michigan’s public roads are intended to be used, not only by motorists, but also, by bicyclists, so long as that use fully conforms with the Motor Vehicle Code’s provisions.

B. Non-motorists are protected by protected by MCL 691.1402(1).

Consistent with that statutorily contemplated use of Michigan’s public roads, MCL 691.1402(1) provides that Michigan’s public roads “shall” be maintained “in reasonable repair” so that all public roads in Michigan are “reasonably safe and convenient for public travel.” According to this Court, “public travel” under MCL 691.1402(1) means everyone who lawfully uses Michigan’s public roads, including bicyclists (and pedestrians). See generally, *Nawrocki v Macomb County Rd Comm’n*, 463 Mich 143; 615 NW2d 702 (2000). Therefore, bicyclists (and pedestrians) also must be protected from unsafe road conditions.

C. MCL 691.1402 is limited to areas “designed for vehicular travel”.

The government’s duty to maintain public roads, and thus, its corresponding liability, is not, however, unlimited. MCL 691.1402(1) also clarifies that “the duty of a governmental agency to repair and maintain highways, and the liability for that duty, extends only to *the improved portion of the highway designed for vehicular travel*, and does not include sidewalks, trailways, crosswalks, or any other installation outside the improved portion of the highway designed for vehicular travel.” Thus, the government’s duty to maintain public roads, even if improved, ends where the road is no longer “designed for vehicular travel.” As such, determining whether an improved section of public road is “designed for vehicular travel” also establishes whether it must be maintained in “a condition reasonably safe and convenient” for all forms of “public travel”, including bicycling, or as in this case, walking.

D. The shoulder of the road is not “designed for vehicular travel.”

In *Grimes v MDOT*, 475 Mich 72; 715 NW2d 275 (2006), this Court held that the shoulder of a public road was not “part of the improved portion of the highway designed for vehicular travel,” even though vehicles do, on occasion, have to travel on the shoulder of such roads. In short, this Court concluded that shoulders were designed only to be used in emergency situations, and thus, unlike the “travel lanes,” were not “designed for vehicular travel” as required under MCL 691.1402(1). Accordingly, this Court held that MDOT had no statutory duty to maintain the shoulder of the road “in reasonable repair.”

E. MDOT wrongly equates parallel parking with the shoulder of the road.

Defendant/Appellant MDOT contends that the same is true in this case. While acknowledging that vehicles do “travel” in lanes designated for parallel parking, MDOT argues nonetheless that such “travel” is limited (to vehicles parking), and thus, even if improved, parallel parking lanes, like shoulders, are not “designed for vehicular travel.” Essentially, Defendant/Appellant MDOT argues that there is no difference between the improved shoulder of a public road and an improved area designated for parallel parking.

The LMB disagrees MDOT’s position, and contends instead that the designated parallel parking area in this case differs substantially from the shoulder of a public road. Accordingly, the result in the *Grimes* case should not be determinative in this case, nor should it control when a defect in the “actual roadbed” exists in a designated bicycling lane.

F. Parallel parking is not the same as the shoulder of the road.

Simply put, the shoulder of the road is not the same as a parallel parking lane, nor is it the same as a designated bicycling lane or other improved section of public road. Such

lanes are not the same as the road shoulder because vehicles routinely travel on them.

Parallel parking lanes are commonly used by vehicles on Michigan's public roads whenever there are no vehicles occupying the designated parallel parking spots. Such use is not only permitted under Michigan law, it is authorized under the Motor Vehicle Code. MCL 257.637(1) expressly provides that "[t]he driver of a vehicle may overtake and pass upon the right of another vehicle . . . when the vehicle overtaken is making or about to make a left turn" or "[u]pon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for 2 or more lines of moving vehicles in each direction and when the vehicles are moving in substantially continuous lanes of traffic." Thus, under Michigan law, vehicles clearly are allowed to overtake or pass other vehicles on the right by using the parallel parking lane, if unoccupied, on a public road like M-22.

Shoulders, in contrast, are permissibly used by vehicles only for emergencies. Under MCL 257.59a, the shoulder is maintained only for "the temporary accommodation of disabled or stopped vehicles". Moreover, parking on the shoulder is not permitted, unless specifically authorized. See generally, MCL 257.674. While vehicles may travel on the shoulder of the road, as this Court noted in *Grimes*, supra, p 89, such travel is not routine because the shoulder of a public road is intended to be used for emergencies only.

In comparison, parallel parking lanes are used by vehicles everyday to permissibly bypass stopped traffic in the main "travel" or "thoroughfare" lane on Michigan's public roads. Bicyclists also commonly use such lanes to accommodate motorists by riding 'as close as practicable to the right-hand curb or edge of the roadway," as required by MCL 257.660a. And, of course, vehicles also pull in and out of such lanes on a regular basis when parking.

G. Bicycling lanes, like parallel parking, are not the shoulder of the road.

Bicycling lanes are used in a similar fashion to parallel parking lanes. In short, motorists use them when turning right from the primary “travel lanes” on a public road. Vehicles also use bicycling lanes or to go around stopped traffic on occasion. When bicyclists use designated lanes, motorists can easily overtake and pass them on the left. Unlike the shoulder of the road, where passing on the right is always prohibited, using a bicycling lane or parallel parking lane to pass stopped traffic is permitted in Michigan.

H. Bicycles are “vehicles.” Thus, bicycling lanes are “designed for vehicular travel,” regardless of whether (and how) motorists use them.

The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language. See *Krohn v Home-Owners Ins Co*, 490 Mich 145; 802 NW2d 281 (2011). The first step in that determination is to review the language of the statute itself. Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. Courts may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, the words of a statute provide the most reliable evidence of its intent. *Krohn*, at pp 156-157.

Much of the discussion in this case assumes that the term “vehicular” as used in the phrase “designed for vehicular travel” under MCL 691.1402 refers to “motor vehicles” only. Such an assumption is unwarranted, because the common ordinary meaning of the word “vehicle,” as uniformly defined in most dictionaries, is not limited to motor vehicles alone.

“Vehicle” is defined, almost always, as some variant of the basic concept that it is “a thing used for transporting people or goods, especially on land.” See generally,

<http://www.merriam-webster.com/dictionary/vehicle>. Meanwhile, the word “bicycle” is commonly defined by using the word “vehicle” to describe its meaning. See generally, <http://www.merriam-webster.com/dictionary/bicycle>. Not surprisingly, the word “vehicular”, as the adjective form of “vehicle,” is defined as “of, or relating to, vehicles.” See also, <http://www.merriam-webster.com/dictionary/vehicular>. While some definitions also state that the term means especially “motor vehicles,” “vehicular” is not defined as meaning, exclusively motor vehicles, which would distinguish bicycles, from its broad parameters.

Presumably, “vehicular travel,” as used in MCL 691.1402(1), has been discussed in terms of motor vehicles, and not bicycles, because MCL 257.79 defines the “word” vehicle as “every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices exclusively moved by human power.”

In *Grimes*, supra, this Court unequivocally held, however, that Motor Vehicle Code definitions should not be given any weight when interpreting MCL 691.1402(1). Instead, the common ordinary meaning, as used in a dictionary, should control for undefined terms. Thus, whether an improved section of public road is “designed for vehicular travel” should include consideration of whether bicycles are vehicles traveling on a given section of road.

Whether a parallel parking lane, as in this case, or a bicycling lane, on some other public road in Michigan, where the street has been “completed,” “vehicular travel” includes all forms of vehicles lawfully traveling on Michigan’s public roads. Clearly, the parallel parking lane on M-22 was designed for “vehicular travel,” including bicycles. The same would be true of a designated bicycling lane on a public road in Michigan. Thus, a duty exists to maintain such areas in a condition safe for public travel under MCL 691.1402(1).

CONCLUSION

Parallel parking lanes, like bicycling lanes, are clearly “designed for vehicular travel.” In Michigan, motorists and bicyclists (as well as pedestrians) are encouraged to “share the road.” Accordingly, efforts are also being taken to ensure “Complete Streets” in Michigan. While the shoulders of Michigan’s public roads may not be “designed for vehicular travel” and thus, need not be maintained in the same manner as other improved sections of public road under MCL 691.1402(1), parallel parking lanes and bicycling lanes are not the same as the shoulders of the road, because such lanes are used for more than just emergencies. Vehicles routinely travel both in parallel parking and bicycling lanes. Moreover, Michigan law authorizes vehicular travel in areas designated both for parallel parking and bicycling. Consequently, such areas must be maintained in a safe condition under MCL 691.1402(1).

RELIEF REQUESTED

The League of Michigan Bicyclists, as amicus curiae, respectfully requests that this Honorable Court affirm the decision of the Court of Appeals in this case, and thus establish that parallel parking lanes, like bicycling lanes, on Michigan’s public roads are “designed for vehicular travel,” and must be maintained under MCL 691.1402(1) in “a condition reasonably safe and convenient” for all “public travel” including bicyclists and pedestrians.

Respectfully submitted:

Dated: September 30, 2015

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